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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING PART TWO OF THE FIRST INSTALMENT OF INDIVIDUAL CLAIMS FOR DAMAGES ABOVE US$100,000 (CATEGORY "D" CLAIMS)

GE.98-60744

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Introduction

1. This report contains the recommendations to the Governing Council of the United Nations Compensation Commission (the "Commission") by the Panel of Commissioners (the "Panel") appointed to review individual claims for damages above US$100,000 ("category 'D' claims"), pursuant to article 38 of the Provisional Rules for Claims Procedure (the "Rules"). 1/ These recommendations concern Claim 3000001 (the "Claim") submitted to the Panel by the Executive Secretary of the Commission as part of the first instalment of category "D" claims pursuant to article 32 of the Rules.

2. The Panel has reviewed the Claim in a continuum with the Panel's processing of the first instalment of category "D" claims. This report should therefore be considered in conjunction with the "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the First Instalment of Individual Claims for Damages above US$100,000 (Category 'D' Claims)" (the "First Report"). 2/ The Claim has been processed on the basis of the considerations, precedents and determinations expressed in the First Report which the present report incorporates by reference.

3. The Claim was filed with the Commission on 7 September 1992, two months after the commencement of the filing period for category "D" claims, making it one of the earliest claims filed with the Commission. The claimant, a Kuwaiti citizen (the "Claimant"), seeks compensation in a total amount of US$30,920,332.00 in respect of personal property losses which are claimed on the D4 page of the claim form, and real property losses which are claimed on the D7 page of the claim form, that he alleges he suffered as a result of the invasion and occupation of Kuwait by Iraq between 2 August 1990 and 2 March 1991 (the "jurisdictional period"). In respect of the D4 personal property losses, the Claimant submitted a claim for loss of clothing, personal effects, household furnishings, jewellery, motor vehicles and boats for US$805,400.88. Under "other" personal property losses, also claimed on the D4 page of the claim form, the Claimant is claiming US$29,900,355.00 in respect of a collection of Islamic art (the "Islamic Art Collection"), including US$2,000,000.00 for a collection of rare books (the "Book Collection"). The D7 real property claim is for US$214,576.12 that the Claimant states he spent on repairing and refurbishing his residence which was damaged during the invasion and occupation of Kuwait by Iraq. The Claimant reduced his claim by US$1,660,000.00 in respect of the Islamic Art Collection for items that he was able to repurchase.

I. THE PROCEEDINGS

4. On 11 April 1997, the Panel issued its first procedural order concerning claims in the first instalment. That order communicated, inter alia, the Panel's decision to classify the Claim as large or complex within the meaning of article 38(d) of the Rules. In that order it was also stated:

"... In respect of Claim 3000001, the Panel is inclined to the view that it is appropriate to use replacement value as of the date of the claimed loss, 2 August 1990, as the basis for valuation for the loss of the art collection being claimed for therein.

"... The secretariat is instructed to transmit to Iraq two copies of this Procedural Order and the file of Claim 3000001. Pursuant to article 36 of the Rules, the Panel hereby invites Iraq to submit on or before 10 October 1997 a written response to Claim 3000001, together with any and all other written comments it may have as well as any and all documents it intends to rely upon in this proceeding.

"... Due to the time period for completing the review of Claim 3000001 under article 38(d) of the Rules, the Panel does not envisage the granting of any extensions of such submission date."

5. On 5 May 1997, pursuant to instructions from the Panel, the secretariat issued a request to the Claimant for information and clarification of certain aspects of the Claim. The Claimant submitted his response on 14 May 1997. A further such request was made to the Claimant following a meeting of the Panel held on 1 to 3 September 1997. The Claimant submitted further materials in response to that request.

6. The Panel held a number of deliberative sessions during which it was assisted by members of the secretariat. In accordance with article 34 of the Rules, the secretariat provided administrative, technical and legal support to the Panel. The Panel was assisted by three sets of outside expert consultants in its review of the Claim. 3/ In order to clarify aspects of the valuation of the Claim, the Panel held a discussion with one of the experts.

7. Although the file of the Claim was duly submitted to Iraq as directed in the Panel's first Procedural Order, no comments were received from Iraq by the due date, i.e., 10 October 1997. However, on 24 December 1997, a response from Iraq was filed with the secretariat ("Iraq's response"). Despite the lateness of Iraq's response, the comments from Iraq were duly considered by the Panel in arriving at its conclusions.

II. EVIDENTIARY STANDARD

8. As stated in the First Report, the Governing Council has put the burden on the claimants to submit documents and other appropriate evidence sufficient to demonstrate both the circumstances and the quantum of the loss. 4/ The Panel further indicated in the First Report that it sees its role as balancing the interests of claimants who had to flee a war zone, with the interests of the Government of Iraq which is liable only for damage caused as a direct result of the invasion and occupation of Kuwait. 5/

III. ARTICLE 16 ISSUES AND COMMENTS

9. The issue concerning the valuation criteria and methodology to be applied in the evaluation of the loss of the art collection was raised in the sixteenth report issued by the Executive Secretary pursuant to article 16 of the Rules as follows: 6/

> "A claim has been submitted for the loss of a private collection of Islamic artwork, including rare ceramics, glasswork, stone, metalwork, textiles, and historical manuscripts and books, in Kuwait during the time of Iraq's occupation. According to the Claimant, some of the looted antiquities are being sold or offered for sale in third countries. In certain cases, the Claimant has been able to repurchase some of the stolen items but at a higher price than originally paid. The issue raised is the appropriate valuation criteria and methodology to be applied for the evaluation of the losses described in the situations listed above."

10. Three Governments including the Government of Iraq submitted additional information and views on that report. Their comments and views were taken into account by the Panel in its assessment of the Claim.

IV. FACTUAL BACKGROUND

11. In the First Report, the Panel made reference to various incidents which demonstrated the circumstances that prevailed during the invasion and occupation of Kuwait by Iraq. These circumstances were detailed in various United Nations documents prepared after the occupation of Kuwait by Iraq ended in March 1991, as well as in Commissioner Panel reports in other categories (the "Background Reports") which the Panel reviewed and found to be important in defining the criteria and evidentiary standards for category "D" claims. 7/

12. The Background Reports described in detail the destruction and chaos inflicted on Kuwait. Of particular relevance to the Claim are observations made in the first report to the Secretary-General of the United Nations on humanitarian needs in Kuwait in the immediate post-crisis environment. 8/ That report was submitted on 28 March 1991 by Mr. Martti Ahtisaari, a former United Nations Under-Secretary General, immediately after the visit of his mission to Kuwait. The report observes that he and his mission saw "... prolific evidence of arson, looting, malicious destruction of homes, businesses, markets, museums, libraries and all that a nation cherishes. Kuwait's coast is disfigured by broken buildings and rolls of barbed wire; its beaches made lethal by hundreds of thousands of mines." 9/

13. The Panel also made reference in the First Report to a report dated 26 April 1991, of Mr. Abdulrahim Farah, a former United Nations Under-Secretary General, in respect of the scope and nature of damage to Kuwait's infrastructure. In particular the Report notes the following concerning damage to residential housing:

"Houses and buildings located along the coastline, and which happened to be the more expensive and luxurious, appeared to have suffered more than others. It was along the coastline that the occupation forces had positioned a great number of their troops as part of the defence. Consequently they occupied most of the houses and fortified a large number of them. Those houses were not only looted and vandalized, but some of their structures damaged. The exteriors displayed particular evidence of such damage since they were used to position troops and weaponry. Pillboxes, bunkers and dug-outs have defaced the urban landscape along the seafront and considerable expense will be required for their removal." 10/

14. It is against this background that the Panel reviewed the circumstances described by the Claimant with respect to the losses claimed as a result of damage to and theft from his house located on Kuwait's coast.

V. THE PERSONAL PROPERTY CLAIM

15. The Claimant seeks compensation for the loss of clothing, household furnishings and appliances, personal effects, jewellery, boats and motor vehicles (the "non-art claim"), and for the loss of the Islamic Art Collection and the Book Collection (the "art claim").

16. Apart from the information provided in the claim form, the materials submitted in support of the Claim include the following:

a. photographs and a video recording made immediately after the liberation of Kuwait showing the Claimant's damaged house and the surrounding area;

b. a valuation report prepared by an international firm of loss adjusters covering each item of loss;

c. itemized lists of personal property stated to have been lost;

d. copies of invoices in respect of a large proportion of the non-art items of personal property;

e. copies of registration documents in respect of the motor vehicles and boats;

f. a valuation report prepared by a well-known auction house which contained fully catalogued schedules of the Islamic Art Collection identifying all of the stolen items;

g. statements/affidavits from several art specialists and other documents evidencing the existence, quality and extent of the Claimant's Islamic Art Collection, as well as the fact that items

from his collection were often loaned to museums for exhibitions abroad;

h. international press articles and other documents reporting the theft of the Islamic Art Collection and the appearance of stolen items for sale;

i. itemized lists in respect of repair work to the Claimant's house and garden accompanied by quotations and receipts for repairs and other work including removal of explosives from his property;

j. witness statements from the Claimant's staff; and

k. a personal statement from the Claimant.

17. In his personal statement, the Claimant describes the circumstances which gave rise to the losses. According to the Claimant, Iraqi forces occupied his home on 13 August 1990. He had left Kuwait a few days earlier, leaving his household staff in his home. His staff witnessed the arrival of the Iraqi troops who forced them to leave the premises. The Claimant's home is located on a beach close to Kuwait City and it is for that reason, the Claimant states, that the Iraqi troops used the house as a staging post.

18. The photographs and a video recording showed the state of the house after the liberation of Kuwait. Documents and markings on walls, as seen in the video recording, identified various units of the Iraqi army that had been based at the house. In his statement the Claimant listed the names of some of the Iraqi units and their commanding officers who were stationed in the house. Trenches were dug in the garden and on the beach in front of the Claimant's house. The Claimant submitted many papers naming persons who had occupied the trenches.

19. Iraq's response contains certain objections to the Claim - essentially, that the Claimant fails to identify the individuals responsible for the alleged theft of the Islamic Art Collection and that there is insufficient evidence of the loss or damage. Iraq's response makes no reference to the issue of valuation and contains no specific comments on the evidence furnished with the claim form, in particular, the allegation and evidence that Iraqi troops occupied the Claimant's house, caused damage to the house, and emptied it of its contents.

A. The non-art claim

20. In addition to occupying his house, the Claimant alleges that the Iraqi troops removed items of personal property from the house. Among the items that the Claimant states were lost and for which he seeks compensation are: the entire contents of his and his family's wardrobe; audio visual and electrical items such as television sets, video recorders, hi-fi equipment, refrigerators, cookers and freezers, microwave ovens,

washing machines and satellite equipment; household furniture such as bedding, recreational items, lamps and various antiques; and one piece of jewellery.

21. The Claimant also seeks compensation for two boats, a 28-foot yacht and a support vessel, which were left moored to the beach outside his residence when he left Kuwait. Further, he seeks compensation for five motor vehicles. The Claimant states that while the boats and motor vehicles were insured, the insurance coverage did not include losses due to war and therefore he was not able to recover any compensation under the insurance policies.

1. Ownership

22. The Claimant submitted itemized lists and original invoices for many of the electrical items, household furnishings and other effects claimed to have been lost. He also submitted copies of the original registration and insurance documents, invoices in respect of each of the boats and motor vehicles, and drop registration certificates for the motor vehicles. 11/

23. The Panel is satisfied that there is sufficient evidence of ownership of most of the items claimed as part of the non-art claim and has recommended compensation in respect of only those items for which documentary evidence was provided.

2. Fact of loss

24. The available evidence of the occupation of the house by Iraqi troops, witness statements, the papers identifying the troops that had been stationed there, as well as photographs and other documentary evidence tendered by the Claimant, demonstrated that the house had been emptied of almost all its contents; that it had suffered extensive physical damage; and that the Claimant's vehicles and boats were either destroyed or stolen. The Panel finds therefore that there is sufficient evidence establishing that the Claimant lost his personal property as a result of Iraq's invasion and occupation of Kuwait.

3. Valuation

25. In addition to the itemized lists and original invoices, the Claimant submitted a report prepared by a well-known international firm of loss adjusters. That report sets out the values originally stated by the Claimant for the items in the non-art claim. The Claimant's loss adjusters reviewed the items and adjusted some of the values. The Claimant seeks compensation in the amounts as adjusted by the loss adjusters he retained.

26. The method of valuation that was adopted by the Claimant's loss adjusters was to establish a replacement cost as of 2 August 1990 as the base value, establish the annual depreciation rate and apply a compound depreciation rate to the base value.

27. In its evaluation of the non-art claim, the Panel also felt it desirable to obtain the assistance of outside expert consultants in respect of the valuation of all the items except the motor vehicles.

28. The Panel's experts reviewed the valuation undertaken by the Claimant's loss adjusters and found that the methodology applied, including the annual depreciation rates used in respect of various items claimed, represented a reasonable assessment of the Claimant's loss.

29. In valuing the Claimant's motor vehicles, the Panel applied the methodology it adopted for D4 motor vehicle claims ("D4 (MV)") as described in the First Report at paragraphs 259 to 274.

4. The Panel's determination with respect to the non-art claim

30. Having reviewed the available evidence as described above, the valuation report of the firm of loss adjusters retained by the Claimant, and the reports submitted by its own experts, the Panel determines that the Claimant should be compensated US$670,822.69 in respect of the non-art claim and recommends accordingly.

B. The art claim

1. The Islamic Art Collection

31. The Claimant states that it was a well-known fact in the art world that he had built up an "unparalleled" collection of ancient and rare Islamic art and a collection of rare books. He further states that the Iraqis were aware of the existence of the Islamic Art Collection. The collection comprised rare ceramics, glass, wood, stone, metalwork, textiles, manuscripts, early printed books and other art forms. The Claimant asserts that the metalwork in particular was unmatched in any public or private collection. In the decade prior to the invasion, the Claimant loaned objects to nearly every major exhibition of Islamic art and to museums in different cities.

32. The Claimant had built a vault in the basement of his home for purposes of safeguarding the Islamic Art Collection and the Book Collection. The vault was protected by a steel grille door. The Claimant alleges that Iraqi military personnel broke open the steel door and that the art work and books contained in the vault, together with other pieces of art displayed throughout the Claimant's home, were "systematically" removed by the Iraqi military personnel. The Claimant was able to hide some of the more valuable pieces of the Islamic Art Collection in his garden and these were not found by the Iraqis and therefore saved.

33. So far as the theft of the Islamic Art Collection is concerned, the Claimant has submitted information showing that, by a letter dated 14 March 1991 (i.e., immediately after Iraq's occupation of Kuwait was ended), the Permanent Representative of Kuwait to the United Nations informed the

President of the Security Council of the theft of the Claimant's art collection. With a further letter dated 17 June 1991 to the President of the Security Council, the Permanent Representative sent a list of antiquities, works of art, manuscripts and books seized from the Claimant's residence during the invasion and occupation of Kuwait. 12/

34. In response to a letter from the United Nations Assistant Secretary-General for General Services and Coordinator for the Return of Kuwaiti Property, the Minister Plenipotentiary and Acting Director in the Department of International Organizations and Conferences in Iraq, by letter dated 10 July 1991, confirmed that the Iraqi Government had removed works of art from Kuwaiti museums, which were being returned, but then went on to state:

> "With regard to the request for antiquities belonging to personal collections, such as the [Claimant's] collection, the specialists of the Iraqi Department of Antiquities were at the time entrusted with the task of removing the contents of official museums. Their duties did not include any attention to personal collections, since many Kuwaiti nationals were present in Kuwait at the time and were able to take care of their personal assets either themselves or through their representatives. Nor did we have any information at that time of such a collection: the Iraqi antiquarian authorities are concerned exclusively with official museums."

35. Iraq's response reiterated that the Government of Iraq had already returned all of the officially alleged (stolen) properties to Kuwait through a United Nations representative and asserted that the claims made by Kuwait through that representative did not contain any reference to the loss of the Claimant's properties. In light of the statement referred to in paragraph 34 above, this last assertion appears to be incorrect as the Iraqi authorities acknowledged the United Nations Assistant Secretary-General's reference to the Claimant's loss but took the position that they were only concerned with properties of official museums and disclaimed any responsibility for loss of the personal collection.

36. The Claimant reported the theft of his personal property, including the Islamic Art Collection, to the police authorities in Kuwait, who in turn exchanged information on the loss of the art work with other police forces worldwide through Interpol. The Claimant stated that a number of his pieces appeared for sale in various places, namely Iraq, Jordan and the United Kingdom. As at the date of the submission of the Claim, the Claimant had been able to repurchase nine pieces of the collection from various sources but at prices higher than those that he had paid for them. As at the date of submission of the Claim, two pieces of the collection were the subject of a police investigation in the United Kingdom, while other pieces were in the custody of police authorities in Switzerland who had seized them from persons attempting to bring them into the country for sale.

(a) Ownership

37. The Claimant asserts that 330 items were lost. In support of his ownership of the items lost, apart from a catalogued list from his valuer, the Claimant submitted affidavits from various persons worldwide who had seen his Islamic Art Collection in his home from time to time or otherwise had first-hand knowledge of the collection.

38. An art dealer specializing in Islamic art in Kuwait attested to being familiar with the collection and to having seen literally every piece of the collection, the last time being as late as three days before the invasion.

39. A large part of the Claimant's collection had been featured in an exhibition of Islamic art held in Copenhagen in March 1987. The director of the museum that hosted the exhibition attested to having received items on loan for the exhibition from the Claimant. The director had travelled to Kuwait, seen the Claimant's collection in his home, and together with the Claimant, selected pieces for the exhibition in Copenhagen. He also recalls having seen most of the objects that were subsequently stolen, at the Claimant's home. The pieces loaned for the Copenhagen exhibition were featured in a catalogue which was submitted as evidence by the Claimant. In all, the exhibition featured 109 pieces from the Claimant's collection, and included 47 of the 330 pieces which the Claimant asserts he lost.

40. Further evidence of the Claimant's ownership includes the following:

a. The curator at the Metropolitan Museum of Art, New York, confirms having known the Claimant since 1978 and having visited his home in Kuwait on several occasions, thus having had an opportunity to see the Claimant's "very remarkable collection of Islamic art" and to have seen this collection grow so as to become one of the best in private hands anywhere in the world; and furthermore, that objects from the collection were loaned by the Claimant to the museum from time to time since 1978.

b. A professor of history at the Institute for the History of Science in Germany observes in a statement that: "the [Claimant's] collection, which rivals small collections in many European and American museums but is more historically important than the majority of them, shows all the signs of having been gathered with meticulous care and excellent judgement and taste. Among the instruments is one piece signed by the celebrated astronomer al-Khujandi: it is the most important Islamic astrolabe from the early period and is one of the two most important Islamic astrolabes in existence today." Being engaged in preparing a catalogue relating to the History of Science, he goes on to state that his "forthcoming description of the instrument by al-Khujandi alone will substantially increase our knowledge of astronomical instrumentation and in particular of astronomy in general in tenth-century Iraq."

c. A researcher at the National Centre for Scientific Research in Paris, engaged in art historical studies relating to the Islamic field for some 25 years, confirms having visited Kuwait on two occasions (in 1982 and 1984) and thus having had occasion to study the Claimant's collection in depth. He describes the collection in the following terms: "It is remarkable for its outstanding level of quality especially in metalwork and pottery, two areas on which this writer has done extensive research. The presence of several silver-inlaid brass vessels with princely or royal dedications; the acquisition of famous pieces from the great European collections formed earlier in this century, often known through publications familiar to every art historian in the field; and, not least, the presence of a number of works of art - bronzes, manuscripts, glass - so far unique to the collection and revealing the existence of hitherto unknown aspects of Islamic art, give the [Claimant's] collection a unique character as well as considerable importance to the art community world wide."

d. A curator at the Ashmolean Museum at Oxford in England, another Islamic art historian, confirms having visited Kuwait and having seen the Claimant's collection, a part of which he catalogued at one time. He describes the collection as: "one of the most important internationally, whether in private or public hands. In it was a unique group of manuscripts and miniatures, including what must have been the only early Abbasid Quran surviving in a complete state, and the superbly illustrated manuscript of the Sulwan al Muta, dating from the Mamluk period. The collection was very rich in wood; it contained examples of the finest marble capitals from Cordova, and in it were many other rarities in ivory, glass and other media. Most numerous were its ceramics, where among the hundreds of top quality pieces were particularly important groups of early Mesopotamian wares, and large and important groups of Raqqa and Damascus medieval glazed wares. Outstanding among the latter was the jar from the Maristan of Nur al-Din in Damascus.

" For me, however, it was the metalwork which made this collection not just an outstanding gathering of important objects, but the most important single collection of Islamic metalwork in the world.

" ... it was arguably the richest collection of Islamic metalwork anywhere in the world, richer than that of the British Museum, richer than that of the Victoria and Albert Museum, to name but the two I know best. And in my experience it was not only a collection of extraordinary beautiful pieces, but also one which had an enormous potential for our future understanding of the development of Islamic art."

41. Based on its review of the evidence, and a confirmation by the Panel's own expert (referred to hereafter) that the Claimant was known to have been putting together his Collection since the 1970s, the Panel is

satisfied that the Claimant owned the items of the Islamic Art Collection that he asserts were lost and for which he seeks compensation.

(b) Fact of loss

42. The Background Reports referred to above clearly show that houses and buildings located on Kuwait's coastline, particularly the more expensive and luxurious, were taken over by the Iraqi forces as they had positioned a great number of their troops on the coast as part of their defence. The houses on the coast were not only looted and vandalized but some of their structures were damaged. Witness statements, the video recording, the photographs and other evidence tendered by the Claimant, establish that the Claimant's house and the trenches on the beach in front of the house were in fact occupied by different units of the Iraqi Army. This evidence, together with evidence of the extensive repairs that had to be carried out on the house, also shows that the Claimant's house had been ransacked, damaged and was devoid of much of its contents and the art collection.

43. The Panel is satisfied that the evidence that the vault (which contained much of the Islamic Art Collection) was broken into and left empty corroborates the Claimant's assertion that his valuable collection was stolen. In addition, the fact that the Claimant's loss was reported to the Security Council immediately after Iraq's occupation of Kuwait had ended in March 1991; the evidence showing the appearance of a considerable number of pieces from the Claimant's collection for sale in different countries and newspaper reports of this fact; and the recovery of certain items by seizure and repurchase, all together establish that the Claimant not only possessed the Islamic Art Collection, but lost the Collection as a result of Iraq's invasion and occupation of Kuwait.

(c) Valuation

44. In support of the compensation claimed for the loss of the Islamic Art Collection, the Claimant submitted a valuation report prepared by a well-known international auction house. The valuation was based on photographs of many of the items supplied by the Claimant.

45. In addition to the auction house valuation, the Claimant provided details of insurance replacement values for the 109 items that were featured in the exhibition in Copenhagen in 1987. The Danish authorities' insurance documentation shows that the total value of all 109 items was US$14,945,000.00.

46. The auction house valued the items on the basis of the purchase price or cost of replacing them with comparable items in similar condition by purchase in the normal retail market as of 2 August 1990. The report of the auction house was also reviewed by the Claimant's loss adjusters who affirmed that in their view the value arrived at by the auction house was a correct representation of the Claimant's loss.

47. Iraq's response made no reference to the issue of the valuation of the Islamic Art Collection. This placed a greater burden on the Panel in its assessment of the issue of valuation.

48. Due to the difficulty of arriving at an objective valuation for a collection of art such as that owned by the Claimant, the Panel decided to seek the assistance of its own expert in assessing the value of the Islamic Art Collection. From a list of Islamic art experts, compiled by the secretariat with the assistance of the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Panel selected an internationally known expert in Islamic art, who was then appointed to assist the Panel.

49. On the basis of photographs, the museum catalogue and the illustrations provided, the Panel's expert was able to determine a value for most of the items in the Islamic Art Collection. Taking into account all the materials provided by the Claimant, as well as the report and the responses of the Panel's expert on various issues raised by the Panel in the course of a discussion, the Panel was able to arrive at what it considers a reasonable valuation of the Claimant's Islamic Art Collection.

(d) The Panel's determination with respect to the Islamic Art Collection

50. Having reviewed the evidence submitted by the Claimant, the Claimant's own valuation report, the report of the Claimant's loss adjusters, and the report submitted by the Panel's own expert, the Panel determines and recommends that the Claimant should be compensated US$16,809,120.00 for the loss of the Islamic Art Collection.

2. The Book Collection

51. The loss of the Book Collection was also reported in the letter dated 17 June 1991 to the President of the Security Council, submitted by the Permanent Representative of Kuwait to the United Nations, and referred to in paragraph 33 above. The Claimant provided lists of the lost books in the following eight categories: early printed books in Arabic (1505 - 1810); early Latin editions of Arabic Books of Science and Medicine; important and rare reference books and exhibition catalogues; large format, illustrated travel, architecture, natural history and maps; periodicals; institutional publications on Near Eastern and Islamic art and archaeology; a library of Arabic books; and rare books in Arabic printed after 1810.

(a) Ownership

52. The Claimant furnished a number of statements from individuals who had knowledge of the Book Collection. A renowned Scandinavian architect who designed the Claimant's house confirms that in order to meet the Claimant's requirement for housing his Islamic Art Collection and the Book Collection, he designed a basement under the whole house with a strong room for the objects of art and a smaller humidity-controlled room for

manuscripts and very old books and two other rooms mainly for books. The architect speaks of having an interest in such collections, and of having spent considerable time looking at the Claimant's collection of books dealing with art, archaeology, architecture (many from Egypt) and very early Latin books and early Arabic printing (1505-1810 A.D.) - for which the humidity-controlled room was specially designed - and books on many other subjects. The Claimant also submitted a Danish architectural magazine from 1987 which featured the Claimant's home. The magazine showed the exterior of the house, pictures of various rooms within the house, and highlighted pictures and a plan of the basement of the house which had been specially designed to display the Book Collection.

53. Statements were also provided from well-known sellers of rare books and manuscripts, indicating that the Claimant had been engaged in collecting rare books and manuscripts for many years. A bookseller from New York confirms that the Claimant had purchased complete libraries of Oriental books, periodicals, papyrus and other old and rare antiquarian books and manuscripts. Another bookseller from The Netherlands confirms that the Claimant had frequently purchased from him rare and old Oriental and Arabic editions published in 16th and 17th Century Europe as well as old Arabic editions published in the Near East in the 19th Century. The director of the National Centre for Scientific Research in Paris who, for the purpose of his own research, had visited the Claimant's house in Kuwait and used his library, describes it as a:

> "vast library of Western books dealing with the art, literature and thinking of the Islamic world. He had all the unobtainable rarities, from the original edition of F.R. Martin's book, to the books on rugs produced earlier in this century in Germany, complete sets of journals not easily found and, not least, a probably unique library of early Arabic editions produced in Italy (Fano), even Spain, Germany and elsewhere. The loss of his library is a calamity to him but also to Kuwait and more broadly the world of scholarship."

54. Another collector states he had visited the Claimant's library regularly and had studied his books extensively. He goes on to describe the Claimant's collection as one of the finest private collections he had seen. The Panel finds the above, together with all the other evidence provided by the Claimant, sufficient to prove the Claimant's ownership of the Book Collection.

(b) Fact of loss

55. Based on the above evidence submitted by the Claimant as to his ownership of the Book Collection and other evidence as referred to in paragraphs 42 and 43 above which showed that the Claimant's house had been occupied by Iraqi troops and had been emptied of all its contents, the Panel is satisfied that the Claimant lost the Book Collection as a result of Iraq's invasion and occupation of Kuwait.

(c) Valuation

56. In view of the expertise needed to value the books, the Panel sought the assistance of one of the leading valuers of books in Europe. This expert considered the evidence submitted by the Claimant sufficient to provide a clear identification of each particular edition and submitted a detailed valuation.

57. The expert stated that the value of the majority of the books listed could be estimated on the basis of the value of other copies of the same editions. Where no record of a particular title existed, a process of analogy with similar types of books was applied. The Panel's expert submitted a valuation significantly higher than the amount claimed. 13/

(d) The Panel's determination with respect to the Book Collection

58. Having reviewed the evidence submitted by the Claimant, the Claimant's own valuation report, and the report submitted by the Panel's expert, the Panel determines that the Claimant should be compensated US$2,000,000 for the loss of the Book Collection, this being the lower of the amount claimed and the valuation by the Panel's own expert.

VI. THE REAL PROPERTY CLAIM

59. In describing the damage to the home caused by the Iraqi troops, the Claimant states that there was spray-painted graffiti on the walls, damage to interior and exterior walls, storage areas, electrical circuits, plumbing and to the Claimant's garden. In addition, the area surrounding the house was planted with land mines.

60. The Claimant submitted a claim in respect of the costs of repairs to his house and the surrounding area. In support of this portion of the claim, the Claimant submitted evidence in the form of witness statements, a video tape, photographs and other material which showed extensive damage to the house and grounds, as well as a schedule of labour charges and invoices for the full amount claimed to carry out repairs in respect of the damage. This portion of the claim was also reviewed and confirmed by the firm of loss adjusters retained by the Claimant.

A. Ownership

61. The Claimant submitted copies of his title deeds, which showed that the Claimant is the owner of the property.

B. Fact of loss

62. As stated in paragraph 24, the Panel accepts the Claimant's personal statement, witness statements, the video recording, photographs and details of the repairs carried out as evidence sufficient to prove that the

Claimant's house was damaged as a result of Iraq's invasion and occupation of Kuwait, and necessitated the expenditure on repairs.

C. Valuation

63. The Panel's expert valuation in respect of the non-art claim included a valuation by a chartered surveyor of the real property portion of the Claim. The chartered surveyor analyzed the various areas of repair work undertaken by the Claimant by referring to the invoices and other documentation submitted in support of the Claim and related it to the photographs, video recording and other evidence provided by the Claimant.

64. The Panel's expert found that the scope of the repair work undertaken by the different contractors appeared to be reasonable in relation to the necessary areas of reinstatement and repair work detailed in the Claim. The expert did not consider that any of the work undertaken was in excess of that required as a result of the damage caused by the Iraqi forces. There was no evidence of improvements to the structure or betterment as a result of the work undertaken.

65. Accordingly, the Panel's expert found that the Claimant's loss adjusters were correct in accepting the scope of work undertaken as reasonable; and that the reinstatement costs incurred appeared competitive and reasonably stated.

D. The Panel's determination with respect to the real property claim

66. Having reviewed the evidence submitted by the Claimant and the report submitted by the Panel's expert, the Panel determines that the Claimant should be compensated US$214,576.12 for his real property losses.

VII. OTHER ISSUES

A. Currency exchange rate

67. The Claimant submitted his Claim denominated in Kuwaiti dinars. In accordance with the Panel's recommendation in paragraph 62 of the First Report, the rate of exchange to be applied for converting Kuwaiti dinars to United States dollars is the rate of exchange on the pre-invasion date, i.e., the rate in effect on 1 August 1990. 14/

B. Interest

68. In paragraph 7 of decision 16, the Governing Council has provided that: "Interest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful Claimants for the loss of use of the principal amount of the award." 15/ The Governing Council further specified that: "Interest will be paid after the principal amount of awards", and decided that the methods of calculation and payment of interest would be considered at the appropriate time. 16/

The Panel therefore recommends the award of interest to the Claimant for his loss as of 2 August 1990, to be calculated at a future date.

VIII. RECOMMENDATION

69. Based upon the findings and determinations noted in this report, the Panel recommends that the Claimant be awarded a total of US$19,694,518.81 broken down as follows: US$670,822.69 for the non-art claim; US$16,809,120.00 for the Islamic Art Collection; US$2,000,000.00 for the Book Collection; and US$214,576.12 for the real property claim. The Panel respectfully submits this report through the Executive Secretary to the Governing Council pursuant to article 38(e) of the Rules.

Geneva, 5 February 1998

(signed) R.K.P. Shankardass
Chairman

(signed) H.M. Joko-Smart
Commissioner

(signed) M.C. Pryles
Commissioner

Notes

1/ S/AC.26/1991/10.

2/ S/AC.26/1998/1.

3/ Three sets of outside expert consultants were retained to assist in the review of the Claim. One set of experts reviewed the non-art personal property claim and the D7 real property claim; another expert reviewed the claim in respect of the Islamic Art Collection; and another expert reviewed the claim concerning the Book collection.

4/ See part VI of the First Report.

5/ See para. 76 of the First Report.

6/ S/AC.26/1996/R.16.

7/ See paras. 19-29 of the First Report.

8/ S/22409.

9/ Ibid., paras. 9-10.

10/ S/22535, para. 367.

11/ As part of the methodology for D4 (MV) claims, the Panel accepted a drop registration certificate as proof of ownership and loss. Drop registration certificates were issued by the Traffic Department in Kuwait after the invasion, in order to certify deregistration of a motor vehicle due to loss or destruction of the vehicle as a result of the invasion and occupation of Kuwait by Iraq. See First Report, paras. 259-274.

12/ S/22709.

13/ See para. 272 of the First Report. In that paragraph, the Panel stated the following: "Generally speaking, a claimant should not be awarded more than the claimed amount".

14/ See note 31 of the First Report.

15/ S/AC.26/1992/16.

16/ Ibid., paras. 2-3.